

# NEWS

NEW JERSEY DEPARTMENT OF

# LWD

LABOR AND WORKFORCE DEVELOPMENT  
n j - g o v / l a b o r

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Department of Labor and

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08625-0110

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**RE: Proposed Readoption with Amendments  
N.J.A.C. 12:35**

**Work First New Jersey and Food Stamp Employment & Training Program**

Attached please find the above-referenced matter which was published in the July 18, 2005 *New Jersey Register*.

If you have any questions, please contact Frederick S. Cohen, Executive Director at (609) 777-2960.

# LABOR AND WORKFORCE DEVELOPMENT

(a)

## DIVISION OF WORKFORCE NEW JERSEY

### Work First New Jersey and Food Stamp Employment and Training Program

#### Proposed Readoption with Amendments: N.J.A.C. 12:35

Authorized By: Thomas D. Carver, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 44:8-114.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-250.

A public hearing on the proposed readoption with amendments will be held on the following date at the following location:

Tuesday, August 2, 2005

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey 08625

Please call the Office of Legal and Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by September 16, 2005 to:

Frederick S. Cohen, Executive Director

Office of Legal and Regulatory Services

New Jersey Department of Labor and Workforce Development

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# LABOR AND WORKFORCE DEVELOPMENT

The agency proposal follows:

## Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:35, Work First New Jersey/General Assistance Program, is scheduled to expire on December 9, 2005. Consistent with the Work First New Jersey Act, at N.J.S.A. 44:8-114, the subject rules establish procedures to be utilized in the resolution of complaints concerning the placement or use of Work First New Jersey (WFNJ) and Food Stamp Employment and Training Program (FSETP) participants in the Community Work Experience Program (CWEP) and Alternative Work Experience Program (AWEP) with nonprofit, public and other workplaces. The Department has reviewed these rules and, with the exception of the amendments described below, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Accordingly, the Department proposes that N.J.A.C. 12:35 be readopted with amendments.

N.J.A.C. 12:35-1 sets forth general provisions of the WFNJ rules, including the purpose and scope of the rules and the definitions to be used throughout the rules. N.J.A.C. 12:35-1.1(a) and (b) are both being amended to make them specifically applicable to public and nonprofit agencies rather than the present "public and other workplaces."

N.J.A.C. 12:35-1.2, Definitions, is being amended; specifically, a "Work First/FSETP participant" will likewise now refer to a person who participates in the CWEP/AWEP and has been assigned to a nonprofit or public agency, rather than the present "public or other workplace."

N.J.A.C. 12:35-2 sets forth the prohibition against replacing or displacing regular employees with WFNJ recipients who participate in CWEP or AWEP, or with FSETP participants. The subchapter also sets forth the complaint procedure to be followed by employees who believe that they have been adversely affected by violations of N.J.A.C. 12:35-2.1. N.J.A.C. 12:35-2.1(a) is being amended to reflect that a Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP participant, shall only be placed or utilized in a position at a nonprofit or public agency, rather than the present "public or other workplace." Moreover, a new subsection (b) is being proposed to reflect that a Work First New Jersey recipient, who participates in a CWEP or AWEP, or is a FSETP participant, shall not be placed or utilized in a position at a private sector for-profit workplace.

The Department proposes that N.J.A.C. 12:35-2.2 be amended to reflect a structural reorganization. The Department proposes to amend N.J.A.C. 12:35-2.2(a) and 2.3(a) to reflect the Department's formal name change from the "Department of Labor" to the "Department of Labor and Workforce Development." Furthermore, since there no longer exists a "Division of Employment and Training" within the Department of Labor and Workforce Development, a copy of a complaint regarding services provided under the Work First New Jersey Act should be forwarded to that Division's successor, the "Division of One-Stop Programs and Services." In addition, in order to reflect the above-mentioned structural reorganization, which also includes the abolition of the title, "Director, Division of Employment and Training," the Department proposes that N.J.A.C. 12:35-2.3 be amended so as to streamline the complaint review process, providing for an initial review to be completed by the Deputy Assistant Commissioner, Division of One-Stop Programs and Services. The decision of the latter will be appealable to the New Jersey State Board of Mediation for an expedited binding arbitration. In addition thereto, N.J.A.C. 12:35-2.3(a)5 is being amended to reflect that a party may review his or her file at the offices of the Division of One-Stop Programs and Services, rather than at the former Division of Employment and Training. Likewise, subsection (b) is being amended to indicate that the Deputy Assistant Commissioner, Division of One-Stop Programs and Services, rather than the Director of the former Division of Employment and Training, will investigate complaints regarding the appropriateness of a Work First/FSETP participant's placement or use at his or her workplace. In a similar vein, N.J.A.C. 12:35-2.3(b)1 is also being amended to indicate that it is the Deputy Assistant Commissioner rather than the Director of the former Division of Employment and Training who shall notify the agency responsible for the placement or use of the participant in question if he or she has deemed said placement or use to be inappropriate. In addition, N.J.A.C. 12:35-2.3(b)2 is also being amended to reflect that the Deputy Assistant Commissioner, rather than the aforementioned Director, will advise the parties of their right to an expedited appeal before the State Board of Mediation. Lastly, N.J.A.C. 12:35-2.3(c) is being amended to indicate that a complainant, or his or her duly authorized union representative, may appeal the Deputy Assistant Commissioner's final decision, rather than that of the Director of the former Division of Employment and Training, to the State Board of Mediation.



As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption with amendments will continue to have a positive social impact in that the rules clarify the appropriate criteria to be applied when WFNJ participants are assigned to workplaces. This will ensure that WFNJ recipients of Temporary Assistance for Needy Families (TANF) or General Assistance (GA), who participate in the CWEP and AWEP, and food stamp recipients who participate in the FSETP are appropriately assigned to workplaces which will enable them to gain valuable work experience. Such experience may assist these recipients in finding permanent jobs, which will improve the quality of their lives and eliminate their dependence upon public assistance. In addition, the rules proposed for readoption with amendments will educate regular employees as to the procedures which must be followed when filing a complaint concerning the placement or use of a Work First CWEP/AWEP and/or FSETP participant in a given workplace.

Lastly, the proposed rules, which will apply to nonprofit or public agencies in lieu of the deleted "public or other workplaces," will comport with the terms of the Work First New Jersey Act. In addition, from both an economic and a social perspective, the new verbiage will further definitionally refine those entities which may derive the benefits, emoluments and rights that flow from participation thereunder. To the extent that it does so, it will permit those affected thereby to receive the economic and social benefits of continued job training, as well as the due process rights that may be utilized in situations where disputes over training procedures or results may occur.

#### Economic Impact

The rules proposed for readoption with amendments will continue to have a positive economic impact. Specifically, the rules will assist Work First CWEP/AWEP and FSETP participants, including general assistance recipients, in obtaining valuable work experience, which may lead to permanent employment opportunities and thereby enable those individuals to maintain an adequate standard of living, eliminating their need for public assistance. The rules proposed for readoption with amendments will also assist in reducing the overall number of individuals receiving public assistance. Moreover, the complaint procedures will protect regular employees from instances of inappropriate displacement by WFNJ participants. The Department will not require additional professional services to comply with these rules.

Lastly, the proposed rules, which will apply to nonprofit or public agencies in lieu of the deleted "public or other workplaces," will comport with the terms of the Work First New Jersey Act. In addition, from both an economic and a social perspective, the new verbiage will further definitionally refine those entities which may derive the benefits, emoluments and rights that flow from participation thereunder. To the extent that it does so, it will permit those affected thereby to receive the economic and social benefits of continued job training, as well as the due process rights that may be utilized in situations where disputes over training procedures or results may occur.

#### Federal Standards Statement

The rules proposed for readoption with amendments do not exceed standards or requirements imposed by Federal law. The rules simply implement the requirements of the WFNJ Act, P.L. 1997, c.38 and are consistent with the Federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193. As a result, a Federal standards analysis is not required.

#### Jobs Impact

The Department does not anticipate an increase or decrease in the number of current jobs as a result of the rules proposed for readoption with amendments. However, it is hopeful that the valuable work experience obtained by Work First CWEP/AWEP and FSETP participants will make them eligible for future employment opportunities.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments establish complaint procedures for employees who believe they have been adversely affected by a

violation of proposed N.J.A.C. 12:35-2.1. As a result, a regulatory flexibility analysis is not required.

#### Smart Growth Impact

The rules proposed for readoption with amendments will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:35.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### CHAPTER 35

#### WORK FIRST NEW JERSEY [GENERAL ASSISTANCE PROGRAM] AND FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12:35-1.1 Purpose and scope

(a) These rules establish procedures to resolve complaints concerning the placement or use of Work First New Jersey (Work First) and the Food Stamp Employment and Training Program (FSETP) participants in the Community Work Experience Program (CWEP) and Alternative Work Experience Program (AWEP) at nonprofit[, public and other workplaces] **and public agencies**.

(b) These rules apply to regular employees who believe they have been adversely affected by the placement or use of Work First New Jersey or Food Stamp Employment and Training Program (FSETP) participants at their worksite. The rules also apply to nonprofit[, public and other workplaces] **and public agencies** at which the work activity is performed and to government agencies responsible for reviewing these complaints.

##### 12:35-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Work First/FSETP participant" means a person who participates in the CWEP/AWEP and has been assigned to a nonprofit[, public or other workplace] **or public agency** under the Work First New Jersey Program or FSETP.

#### SUBCHAPTER 2. PLACEMENT OR USE OF WORK FIRST/FSETP PARTICIPANTS AT WORKPLACE

##### 12:35-2.1 Prohibition on replacing or displacing regular employees

(a) A Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP [recipient] **participant**, shall be placed or utilized in a position at a nonprofit[, public or other workplace] **or public agency**:

1.-7. (No change.)

(b) A Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP participant, shall not be placed or utilized in a position at a private sector for-profit workplace.

##### 12:35-2.2 Complaint procedures: State service employees

(a) Any State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the Governor's Office of Employee Relations.

1.-2. (No change.)

3. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services and to the Division of [Employment and Training] **One-Stop Programs and Services**, within the Department of Labor and Workforce Development.

4.-8. (No change.)

##### 12:35-2.3 Complaint procedures: Non-State service employees

(a) Any non-State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the [Director, Division of Employment and Training] **Deputy Assistant Commissioner, Division of One-Stop Programs and Services**, within the Department of Labor and Workforce Development.



1.-4. (No change.)

5. A party may review the file at the offices of the Division of [Employment and Training] **One-Stop Programs and Services** during regular business hours.

(b) The [Director, Division of Employment and Training] **Deputy Assistant Commissioner, Division of One-Stop Programs and Services**, or his or her designee, shall investigate the complaint and render a written decision as to the appropriateness of the Work First/FSETP participant's placement or use at the workplace within 10 days of receipt of the complaint.

1. If the [Director, Division of Employment and Training] **Deputy Assistant Commissioner, Division of One-Stop Programs and Services**, or his or her designee, determines that the placement or use of the Work First/FSETP participant violates N.J.A.C. 12:35-2.1, he or she shall notify the agency responsible for placement that the placement or use is not appropriate and that the participant should be immediately removed from the position.

2. The decision of the [Director, Division of Employment and Training] **Deputy Assistant Commissioner, Division of One-Stop Programs and Services**, or his or her designee, shall advise the parties of the right to appeal to the New Jersey State Board of Mediation for an expedited binding arbitration.

(c) A complainant or his or her duly authorized union representative may appeal the final decision of the [Director, Division of Employment and Training] **Deputy Assistant Commissioner, Division of One-Stop Programs and Services** to the Board of Mediation within 10 days of receipt of the decision.

1.-3. (No change.)

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